

ENVIRONMENTAL QUALITY

CHAPTER 30

WATER QUALITY

Sub-Chapter 20

Assessment of Administrative Penalties for
Violations of Water Quality Act

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Sub-Chapter 20

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for Violations of Water Quality Act

17.30.2001 DEFINITIONS For purposes of ARM 17.30.2001 through 17.30.2006, the following terms have the meanings or interpretations indicated below and must be used in conjunction with and supplemental to those definitions contained in 75-5-103, MCA:

- (1) "Class I violation" means:
 - (a) a violation of a department order;
 - (b) a discharge of waste that enters state waters without a permit, or in a quantity or quality not authorized by a permit, unless the discharge falls under (3)(c) of this rule as a Class III violation;
 - (c) failure to comply with a requirement regarding notification of a spill, bypass or upset condition that results in an unpermitted discharge to state waters;
 - (d) violation of a permit compliance plan or schedule;
 - (e) failure to provide reasonable access to premises or records when required by 75-5-603, MCA, a permit, or an order; or
 - (f) a violation that causes a major harm or poses a major risk of harm to public health or the environment.
- (2) "Class II violation" means:
 - (a) construction, operation, or modification of a disposal system without first obtaining the appropriate permit;
 - (b) failure to submit a report or plan, as required by rule, permit, or license and not otherwise classified in this rule;
 - (c) placement of wastes in a location that will cause pollution of state waters;
 - (d) failure to monitor in accordance with a permit;
 - (e) failure to pay a permit fee as required by department rule or order; or
 - (f) any violation that is not otherwise classified in this rule.
- (3) "Class III violation" means:
 - (a) failure to submit a discharge monitoring report of sample analyses by the time specified in an applicable permit;
 - (b) failure to submit a complete discharge monitoring report;

(c) exceeding a permit condition limiting biochemical oxygen demand (BOD), carbonaceous biochemical oxygen demand (CBOD), or total suspended solids (TSS) by a concentration of 20% or less, or exceeding a mass loading limitation by 10% or less;

(d) violation of a removal efficiency requirement by a factor of less than 0.2 times the number value of the difference between 100 and the applicable removal efficiency requirement; or

(e) violation of a pH requirement by less than 0.5 pH.

(4) "Compliance" means meeting requirements of the Water Quality Act, Title 75, chapter 5, MCA, ARM Title 17, chapter 30, and any permit, authorization, or order issued under any of these authorities.

(5) "Extent and gravity of the violation" means the extent of a violator's deviation from the applicable permit, authorization, rule, statute, or order. Relevant factors include concentration, volume, percentage, duration, toxicity, and the actual or potential effects of the violation on human health or state waters. Any single factor may be conclusive.

(6) "Nature of the violation" means the class to which the violation belongs as determined under (1), (2), or (3) of this rule.

(7) "Permit" means a Montana groundwater pollution control system or Montana pollutant discharge elimination system permit issued under ARM Title 17, chapter 30, subchapters 10 and 13 respectively; or an authorization under ARM 17.30.637(3).

(8) "Requirement" means any applicable provision of the Water Quality Act (Title 75, chapter 5, MCA), or its implementing rules (ARM Title 17, chapter 30), or any provision of a permit, authorization, or order issued under any of these authorities.

(9) "Violation", unless otherwise specified within a rule, means a transgression of any requirement of the Water Quality Act, Title 75, chapter 5, MCA, ARM Title 17, chapter 30, and any permit, authorization, or order issued under any of these authorities. (History: 75-5-201, MCA; IMP, 75-5-611, MCA; NEW, 1998 MAR p. 940, Eff. 4/17/98.)

Rule 17.30.2002 reserved

17.30.2003 ENFORCEMENT ACTIONS FOR ADMINISTRATIVE
PENALTIES

(1) Before initiating an administrative penalty action under this rule, the department shall issue a notice letter, in accordance with 75-5-617, MCA, notifying the person of the violation and requiring compliance. The department is not required to issue a notice letter under 75-5-617, MCA, if the violation represents an imminent threat to human health, safety, or welfare or to the environment.

(2) Upon determination that a violation has occurred, the department may initiate an administrative penalty action in accordance with 75-5-611, MCA, and this rule. Except for a violation specified under (7), the department shall first issue a written notice letter to a violator by certified mail or personal delivery that:

(a) contains the information required in 75-5-611(1), MCA, including the amount of penalty proposed for assessment under (6);

(b) explains how the penalty was calculated;

(c) describes the violator's opportunities for administrative appeal or for informal conference with the department; and

(d) discloses that, unless the alleged violation is vacated or dismissed, the department will include the alleged violation in violator's history for purposes of assessing penalties for any future violations even though this violation may ultimately be resolved without assessment of a penalty.

(3) Refusal to accept delivery of the notice letter does not render service incomplete.

(4) A notice letter issued in accordance with (2) satisfies the notice letter requirement in (1).

(5) Except as provided in (7), the department may not assess a penalty for a violation cited in the notice letter if the violator submits to the department in writing within the time specified in the notice letter:

(a) a response signed by the violator certifying that its activity was, or is now, in compliance with all requirements cited in the notice letter; or

(b) a proposal that describes a plan and schedule for corrective action that will bring the activity into timely compliance with the requirements cited in the notice letter and that is approved by the department.

(i) The department shall respond to a proposed corrective action plan within 30 days either approving or disapproving the proposed plan.

(6) If, after completing the requirements of (2), the department determines that the violator has not adequately responded as required in (5), the department may issue an administrative notice and order that assesses a penalty.

(a) The administrative notice and order must contain, as applicable, the information described in (2).

(b) If the department finds that a violator is not in compliance as certified under (5), or if a violator fails to adhere to the requirements of the plan and schedule for corrective action approved under (5)(b), the department may without further notice issue an administrative notice and order assessing a penalty.

(7) In lieu of the notice letter under (2), the department may issue an administrative notice together with an administrative order if the department's action:

(a) does not involve assessment of an administrative penalty; or

(b) seeks an administrative penalty only for an activity that the department believes and alleges was or is a violation of 75-5-605, MCA, and the violation was or is:

(i) a class I violation as described in ARM 17.30.2001(1); or

(ii) a violation of major extent and gravity as described in ARM 17.30.2006.

(8) Nothing in this rule may be construed as limiting the department's authority under Title 75, chapter 5, MCA, to address violations through administrative compliance or cleanup orders or through judicial actions for penalties or injunctive relief. (History: 75-5-201, MCA; IMP, 75-5-611, MCA; NEW, 1998 MAR p. 940, Eff. 4/17/98; AMD, 2002 MAR p. 1749, Eff. 6/28/02.)

Rule 17.30.2004 reserved

17.30.2005 FORMULA FOR DETERMINING ADMINISTRATIVE PENALTIES (1) Subject to (7) of this rule and the limits provided in 75-5-611, MCA, the department shall determine the penalty in accordance with the point system set out in this rule.

(2) The department shall assign points for each violation based on the following criteria:

(a) The department shall consider the nature, extent, and gravity of the violation. The nature of the violation must be classified and its extent and gravity determined in accordance with ARM 17.30.2006. Points must then be assessed in accordance with the following matrix:

<u>Nature of violation</u>	<u>Extent and gravity of violation</u>		
	<u>minor</u>	<u>moderate</u>	<u>major</u>
class I:	31 - 36	37 - 43	44 - 50
class II:	16 - 20	21 - 25	26 - 30
class III:	1 - 5	6 - 10	11 - 15

(b) The department shall consider the circumstances of the violation. If a violation has occurred through no negligence on the part of the violator, it must not be assigned points under this category. A violation involving ordinary negligence, which is failure to exercise toward the violated legal requirement the care ordinarily exercised by a person of common prudence, must be assigned 1 to 15 points depending upon the degree of negligence. If the violation occurred due to gross negligence which is gross or reckless disregard for the violated legal requirement, or intentional conduct, it must be assigned 16 to 30 points depending upon the degree of fault.

(c)(i) In calculating a penalty, the department shall consider the violator's history of violations within 3 years prior to the date of the violation for which a penalty is being assessed. One point must be assigned for each class III violation; 3 points for each class II violation; and 5 points for each class I violation. Except as provided in (ii) below, any violation of which the violator has received written notice must be counted regardless of whether further enforcement action was taken.

(ii) A violation must not be counted if:

(A) the notice or order was vacated; or

(B) the notice or order is subject to a pending administrative or judicial action or if the time to request review or to appeal any administrative or judicial decision has not expired.

(d) The department shall consider voluntary mitigation. If the violator takes measures beyond those required by law to address or mitigate the violation or the impacts of the violation to waters of the state, 1 to 10 points may be deducted from the total points assigned depending on the amount voluntarily expended. No points may be deducted for corrective actions conducted by the violator pursuant to a department permit, notice or order.

(3) The points from (2)(a) through (d) of this rule are totaled and the amount of penalty must be determined from the following point schedule:

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<u>Points</u>	<u>Dollars</u>	<u>Points</u>	<u>Dollars</u>
10 and below	\$200	56	\$3,600
11	\$220	57	\$3,700
12	\$240	58	\$3,800
13	\$260	59	\$3,900
14	\$280	60	\$4,000
15	\$300	61	\$4,100
16	\$320	62	\$4,200
17	\$340	63	\$4,300
18	\$360	64	\$4,400
19	\$380	65	\$4,500
20	\$400	66	\$4,600
21	\$420	67	\$4,700
22	\$440	68	\$4,800
23	\$460	69	\$4,900
24	\$480	70	\$5,000
25	\$500	71	\$5,100
26	\$600	72	\$5,200
27	\$700	73	\$5,300
28	\$800	74	\$5,400
29	\$900	75	\$5,500
30	\$1,000	76	\$5,600
31	\$1,100	77	\$5,700
32	\$1,200	78	\$5,800
33	\$1,300	79	\$5,900
34	\$1,400	80	\$6,000
35	\$1,500	81	\$6,200
36	\$1,600	82	\$6,400
37	\$1,700	83	\$6,600
38	\$1,800	84	\$6,800
39	\$1,900	85	\$7,000
40	\$2,000	86	\$7,200
41	\$2,100	87	\$7,400
42	\$2,200	88	\$7,600
43	\$2,300	89	\$7,800
44	\$2,400	90	\$8,000
45	\$2,500	91	\$8,200
46	\$2,600	92	\$8,400
47	\$2,700	93	\$8,600
48	\$2,800	94	\$8,800
49	\$2,900	95	\$9,000
50	\$3,000	96	\$9,200
51	\$3,100	97	\$9,400
52	\$3,200	98	\$9,600
53	\$3,300	99	\$9,800
54	\$3,400	100 and above	\$10,000
55	\$3,500		

(4) The penalty amount determined under (3) of this rule is multiplied by the number of days on which the practice or condition constituting the violation has occurred, subject to the limits provided in 75-5-611, MCA.

(5) The department shall determine any economic benefit or savings that the violator gained as a result of the violation. The department shall use the best information reasonably available to it at the time of calculating the penalty to determine the economic benefit or savings. The dollar value of the economic benefit or savings, if any, shall be added to the penalty amount calculated in (1) through (4) of this rule to determine the total penalty amount.

(6)(a) If the violator is unable to immediately pay the full penalty amount, the department may place the violator on a payment schedule with interest on the unpaid balance at the rate assessed by the Montana department of revenue on income tax due.

(b) The department may reduce a penalty determined under this rule based on the violator's inability over the long term to pay the full penalty amount pursuant to (a) above. If the violator seeks to reduce the penalty based on its inability to pay the penalty, the violator shall provide to the department documentary evidence demonstrating the violator's financial limitations. However, the full penalty amount may not be lowered to a value less than the violator's economic benefit resulting from the violation.

(c) To be eligible for a penalty reduction based on inability to pay the penalty, the violator must show that the violation was not intentional or flagrant.

(7) The department may waive the point system if it finds that exceptional factors make use of the point system demonstrably unjust or demonstrably inadequate as a deterrent. The department shall set forth the basis for waiver in writing. The department may not waive use of the point system or reduce the penalty on the basis that a reduction in the penalty could be used to offset the costs of abating the violation. If the department waives the use of the point system, it shall use the criteria listed in this rule, but not the points attributable thereto, and other matters that justice may require to determine the amount of penalty. (History: 75-5-201, MCA; IMP, 75-5-611, MCA; NEW, 1998 MAR p. 940, Eff. 4/17/98.)

17.30.2006 EXTENT AND GRAVITY OF THE VIOLATION (1) For the purpose of ARM 17.30.2001 through 17.30.2006, the extent and gravity of the violation must be characterized as major, moderate, or minor according to the following criteria:

(a) A violation is "major" if:

(i) the violation presents a high likelihood of exposing humans to significant pollution; or

(ii) the violator deviates from the applicable requirements such that there is significant noncompliance in terms of both degree of deviation and length of time.

(b) A violation is "moderate" if:

(i) the violation has exposed or will likely expose state waters, but probably not humans, to significant pollution; or

(ii) the violator deviates from applicable requirements such that there is significant noncompliance in terms of either degree of deviation or length of time, but not both.

(c) A violation is "minor" if:

(i) the violation poses a relatively low likelihood of exposing humans and a low likelihood of exposing state waters to significant pollution; and

(ii) the violator deviates from applicable requirements but not to the extent that there is significant noncompliance in terms of either degree of deviation or length of time.

(History: 75-5-201, MCA; IMP, 75-5-611, MCA; NEW, 1998 MAR p. 940, Eff. 4/17/98.)